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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,451	04/30/2001	Ming Duong-van	3397P006	4450

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN
12400 WILSHIRE BOULEVARD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

HOM, SHICK C

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,451

Applicant(s)

DUONG-VAN ET AL.

Examiner

Shick C. Horn

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1, 2, and 5 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

2. The informal drawings are not of sufficient quality to permit examination. Accordingly, replacement drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to this Office action. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action.

Applicant is given a TWO MONTH time period to submit new drawings in compliance with 37 CFR 1.81. Extensions of time may be obtained under the provisions of 37 CFR 1.136(a). Failure to timely submit replacement drawing sheets will result in ABANDONMENT of the application.

Specification

3. The disclosure is objected to because of the following informalities: in page 2 of "Amendment to the Specification" of the response of 3/21/05, lines 17-18 and 20 delete "Attorney docket No. 003997.P008;" and "Attorney Docket No. 003997.P010," respectively. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Aharoni et al. (6,014,694).

Regarding claim 1:

Aharoni et al. disclose a method, comprising operating a control node of a communication network at a packet bandwidth corresponding to a best observed resonance point of a network performance metric from a plurality of resonance points, wherein the resonance points are determined by scanning across a range

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of control bandwidths until one or more of the network performance metrics is/are optimized (see col. 19 lines 22-41 which recite means for measuring bandwidth to determine the optimum bandwidth for a particular network connection in order to optimized performance of the transport of video data across a network by the server clearly anticipate operating a control node in according to packet bandwidth corresponding to best observed resonance point of a network performance metric whereby resonance points are determined by scanning bandwidths until one or more performance metrics is/are optimized; further see Fig. 11 which recite the step of scanning bandwidth and col. 1 lines 45-62 which recite the available bandwidth being measured to provide optimum quality video to each site, col. 2 lines 11-28 and lines 54-65 which recite transporting video over varying available bandwidth and adjusting the compression ration to accommodate bandwidths whereby levels of frame compression is selected in accordance with the bandwidth is optimized) as recited in claim 1.

Regarding claim 2:

Aharoni et al. disclose wherein the network performance metrics comprise one or more of throughput, average fetch time and packet loss (see col. 17 lines 52-67 which recite reporting to the server the bandwidth related information based on the

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number of errors and number of data packets lost, i.e. the quality of the connection and rate of packet loss clearly anticipate the performance metrics comprising one or more of throughput, average fetch time and packet loss).

Regarding claim 5:

Aharoni et al. disclose wherein the packet bandwidth is set by varying an inter-packet delay time over selected communication links at the control node (see abstract which recite the video stream frames being transmitted over network channels having the available bandwidth varying with time and location clearly anticipate the packet bandwidth being set varying over selected communication links).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kikuchi et al. disclose method of and apparatus for measuring network communication performances, as well as computer readable record medium having network communication performance measuring program stored therein.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS**

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ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Monday to Friday with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SH



DANG TON
PRIMARY EXAMINER